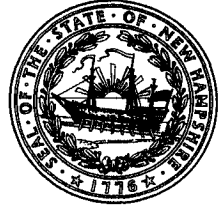




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

June 13, 2006

Anthony Poissant
Cathy Poissant
95 Slab Bridge Road
Assonet, MA 02702

Re: Docket No. AF 05-096 – Settlement Agreement

Dear Anthony and Cathy Poissant:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Linda Magoon, DES WD

Anthony Poissant
Cathy Poissant
95 Slab Bridge Road
Assonet, MA 02702

Re: 28 Elm Street, Ossipee Tax Map 55, Lot 23
File # 2002-1385

**ADMINISTRATIVE FINE
No. AF 05-096**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division ("the Division"), Anthony and Cathy Poissant, parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Anthony and Cathy Poissant are the owners of land located on 28 Elm Street, Ossipee, more particularly described on Town of Ossipee Tax Map 55 as Lot 23 ("the Property"). The Property has approximately 270 feet of frontage on Duncan Lake.
4. On December 22, 2005, the Division issued Notice of Proposed Administrative No. AF 05-096 (the "Notice") to Anthony and Cathy Poissant seeking fines totaling \$4,500 for violations of RSA 482-A.
5. Specifically, the Notice cited Respondents for violating RSA 482-A:3 by placing approximately 400 square feet of sand into a jurisdictional area. Pursuant to Env-C 614.02(a) DES sought a fine of \$500.
6. The Notice also cited Respondents for violating Administrative Order No. WD 05-018 issued on June 27, 2005, pursuant to RSA 482-A:6, by (a) failing to remove the sand; and (b) failing to provide documentation that the sand had been removed. Pursuant to Env-C 614.06(e) DES sought a fine of \$2,000 per violation of an order, or \$4,000 for the violations of the Administrative Order.
7. Upon re-inspection on March 8, 2006, DES staff noted that the sand had been removed from the bank and that the Respondents had substantially complied with the Order, albeit belatedly.

8. In order to settle this matter, the Division and Respondents have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine, in the amount of \$4,500, the Division agrees to suspend 75%, or \$3,375 contingent upon the Respondents remaining in compliance with the statutes, rules, and permits under the purview of DES, including the Wetland Rules, for a period of two years from the date of the execution of this Agreement. If the Respondents fail to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$3,375 shall become due and payable immediately. Additionally, the Respondents agree to remove the remaining small amount of excess sand left in the jurisdictional area and rake and grade the area previously covered by the sand pile by **May 1, 2006**. If Respondents maintain compliance with the rules for the prescribed two-year period, and meet the deadline set out in this paragraph, the suspended portion of the fine shall be waived; otherwise, the amount of \$3,375 shall become due and payable immediately.

10. Respondents agree to pay the remaining \$1,125 upon execution of this Agreement.

11. Payment under Paragraph #10 and any payment that becomes due pursuant to Paragraph #9 shall be paid by certified or corporate check made payable to: "Treasurer, State of New Hampshire" and mailed to:

Department of Environmental Services - Legal Unit
Attn: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

13. By executing this Agreement, Respondents waive their right to a hearing on or any appeal of the administrative fines identified in the Notice, and agree that this Agreement may be entered into and enforced by a court of competent jurisdiction.

14. The effective date of this Agreement will be the date on which it is signed by Anthony and Cathy Poissant, the Director of the Water Division, and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by all parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

6-7-06
Date

COPY

Anthony Poissant

6-7-06
Date

COPY

Cathy Poissant


6/9/06
Date

DES Water Division

COPY

Harry T. Stewart, P.E., Director

This Motion to Accept Settlement agreement is granted this 12th day of June 2006.

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services